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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-111

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

At the outset, it is noted that the department did not provide the explanatory materials that are required to accompany a rule submission to the Rules Clearinghouse. The missing materials are described in comment 2. a., below. The department should ensure that all of the required items are included when the rule is submitted to the Legislature. Also, as the lengthy comments below indicate, the rule is poorly drafted and appears not to have been reviewed and edited prior to submission to the Clearinghouse. It is in need of significant revision to make it readable, understandable, and in conformity with statutory requirements and drafting conventions.

#### 1. Statutory Authority

a. As drafted, provisions of the rule regarding who may apply for and receive military family financial aid conflict with the statutory provision governing the program. Section 321.45 (2), Stats., directs the department to “provide financial aid *to eligible members of the immediate family* of service members.” (Emphasis added.) The statute makes no reference to providing aid to the service members themselves. However, s. DMA 1.03 states that the purpose of military family financial aid is to provide financial support *to service members and* their immediate families dealing with emergency situations. Further, s. DMA 1.02 (1) defines “applicant” as *a service member or* member of the immediate family of a service member that applies for military family financial aid. These provisions should be redrafted to clarify that the aid is paid to the families of service members and that the family members, not the service members, are the applicants for aid. [See also comment 5. a. below, regarding s. DMA 1.03.]

b. Section 321.45 (2), Stats., also directs the department to promulgate rules “establishing eligibility criteria and the amount of financial aid” for the program. The department does not fulfill the statutory directive to establish “the amount of financial aid,” nor does it concisely set forth the eligibility requirements that must be met. [See comment 5. d., below, regarding eligibility requirements]. The rule does not set forth any dollar amounts for aid payments; instead, it delegates that responsibility to a “fund administrator,” by providing in s. DMA 1.07 that a “grant shall be paid to an eligible applicant in an amount to be determined by the fund administrator.” This is contrary to the statutory directive that aid amounts be established by administrative rule.

c. Section DMA 1.08 creates a “governance board” to oversee and distribute aid to military families. Confusingly, the rule interchanges “governance board” with “fund administrator,” which s. DMA 1.02 (4) defines as “the governance board appointed by the adjutant general to oversee and distribute military family financial aid funds.” Several problems are noted:

- (1) It is unclear under what authority the department creates a governance board or fund administrator to administer the program and why it is necessary to do so. Section 321.45, Stats., does not direct the department to create an entity to administer this aid. Since the membership of the governance board in s. DMA 1.08 is comprised of agency staff, the Adjutant General could simply designate one or more of that staff to carry out specified program functions.
- (2) If retained, the “governance board” should not be called a “board.” That term has a specific meaning in the statutes that appears inapplicable to the limited functions this entity would perform. Section 15.01 (1r), Stats., defines “board” as a part-time body that functions as a policy-making unit for a department or independent agency or a part-time body with policy-making or quasi-judicial powers. The governance board established in this rule would not appear to have broad policy-making functions agency-wide, but rather would oversee only a single aid program. Also, the powers and duties of the entity should be clarified. For example, the “fund administrator” is defined as the board appointed to oversee and distribute aid. However, under s. DMA 1.08 (1), the board is established to provide oversight of the management of the aid process (the meaning of which is unclear) but no mention is made of the board distributing funds. These points must be clarified if an entity is created.

## **2. Form, Style and Placement in Administrative Code**

a. As noted in the introductory comment, the department failed to submit the explanatory materials that must accompany a rule transmitted to the Rules Clearinghouse. As specified in s. 1.02 (1) and (2), Manual, the department should have provided the following items:

- (1) An introductory clause enumerating the statutory sections treated by the proposed order and the nature of the treatment, and a relating clause concisely stating the subject matter of the proposed order.
- (2) A rule summary following the introductory clause, containing all of the following headings (and if there is no information under a particular heading, the heading should be included and the text should state that there is no information):
  - (a) Statute interpreted.
  - (b) Statutory authority.
  - (c) Explanation of agency authority.
  - (d) Related statute or rule.
  - (e) Plain language analysis.
  - (f) Summary of, and comparison with, existing or proposed federal regulations.
  - (g) Comparison with rules in adjacent states.
  - (h) Summary of factual data and analytical methodologies.
  - (i) Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.
  - (j) Effect on small business.
  - (k) Agency contact person including e-mail and telephone.
  - (l) Place where comments are to be submitted and deadline for submission.

Two key items are the agency's recitation of its statutory authority to promulgate the rule and the plain language analysis of the rule's content. These are not insignificant materials that an agency may decline to provide. Rather, they constitute the agency's justification of its authority to promulgate the rule and its own explanation of what the rule does. These items, and the other information required to be provided, enable the legislature to exercise its rule-making oversight.

b. In the Table of Contents, the titles of ss. DMA 1.04, 1.07, and 1.11 do not match the titles in the rule text.

c. Titles to rule sections are to be written with an initial capital letter and in bold print; for example, "**DMA 1.01 Purpose.**" [s. 1.05 (2) (b), Manual.] All of the section titles should be revised accordingly.

d. Language from page 1 is duplicated at the top of page 2, beginning with "SECTION 1." and ending with the text of s. DMA 1.01.

e. Before the chapter title, the phrase “Chapter DMA 1” should be deleted. In the chapter title, the word “RULE” should be deleted. It could be replaced by “PROGRAM” or left without additional language. The title to s. DMA 1.03 should be changed, so that it is not identical to the chapter title. [See also comment 5. b., regarding this provision.]

f. A definition of “aid” could be provided, to avoid having to repeat the full phrase “military family financial aid.”

g. In s. DMA 1.02 (4), “Adjutant General” and “Military Family Financial Aid” should not be capitalized. [See s. 1.01 (4), Manual, regarding capitalization and review the entire rule for other occurrences.]

h. In s. DMA 1.02 (7), the definition of “state” is unnecessary if references in the rule to “residents of the state” are changed to “residents of this state.”

i. In s. DMA 1.04 (4) (intro.), the phrase “all of” should be inserted before the phrase “the following.”

j. In s. DMA 1.05 (8), the phrase “s. 1.07 of this chapter” should be replaced by a cross-reference to “s. DMA 1.07.”

k. In s. DMA 1.08 (1) (intro.), the phrase “shall be established” should be replaced by the phrase “is created.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. As a general note, this rule is replete with unclear language, ungrammatical wording, and needlessly complicated provisions. The following comments provide numerous examples of problems with the rule as drafted. The entire rule should be carefully reviewed and redrafted to eliminate all occurrences of problems noted.

b. Section DMA 1.01 states that the purpose of the chapter is to establish the eligibility criteria, the amount of financial aid, *and the application process* (emphasis added) for military family financial aid “as required in s. 321.45, Stats.” However, the statute refers only to the eligibility criteria and the amount of financial aid. Therefore, while the rule appropriately addresses the application process, it should not denote that process as being referenced in s. 321.45. Also, to avoid having two separate statements of purpose, ss. DMA 1.01 and 1.03 could be combined in s. DMA 1.01, to read: “The purpose of this chapter is to establish the eligibility criteria and the amount of aid to be provided to the immediate families of service members faced with emergency financial situations, as provided in s. 321.45, Stats.” This change will result in renumbering remaining rule sections beginning with s. DMA 1.04, which would become s. DMA 1.03. [In the remaining comments, sections are referred to with their current numbering.]

c. Since the purpose of the program is to provide financial assistance in emergency situations, the definition of “emergency situation” in s. DMA 1.02 (3) should contain some reference to a financial emergency.

- d. Several problems are noted with respect to s. DMA 1.04, relating to eligibility:
- (1) This section mixes eligibility requirements, factors to be considered in determining aid, and financial information an applicant must provide to justify a request for aid. The first two categories should be placed in separate subsections of s. DMA 1.04. The financial information should be moved to s. DMA 1.05, governing the application process. The eligibility language should concisely set forth applicable criteria, so potential applicants will know whether they qualify for aid.
  - (2) The *department* is authorized in sub. (1) (intro.) to make payments, but the *fund administrator* is directed, in the remainder of this section, to make the various determinations relating to eligibility and other items. Only one entity should have those responsibilities. Also, in s. DMA 1.02 (4), the fund administrator is identified as the entity appointed to distribute military family financial aid funds, which conflicts with the language in sub. (1) (intro.) authorizing the department to make payments. This problem would be eliminated if the fund administrator (and governance board) were eliminated from the rule, as suggested in comment 1. c., above.
  - (3) In circuitous language, sub. (1) (intro.) and (a) provide that the department may make payments to an eligible applicant if the applicant is determined eligible.
  - (4) It appears that subs. (1) (b) and (3) (b) require the same information.
  - (5) In sub. (4) (a), what is meant by the total value of “actual and projected eligible costs”?
  - (6) In sub. (4) (b), “an” should be inserted before “applicant’s.”
- e. The following problems are noted regarding s. DMA 1.05, relating to the application process:
- (1) This section is too detailed, making it difficult to understand the application process. The language should be streamlined.
  - (2) In sub. (1), are “requirements for funding” the same as “eligibility criteria”? If so, only one phrase should be used to avoid confusion. Similarly, there are inconsistent references to “application materials” and “completed forms and supporting documentation,” which cause confusion as to the items being referenced.
  - (3) The material in sub. (2) and the first paragraph of sub. (3) should be placed in a Note at the end of the section. In sub. (3), “shall” could be changed to “should” because the tone of a note is more informal.

- (4) The introductory clause to the second paragraph of sub. (3) is an incomplete sentence. It appears that the numbered items list information that should be requested in the application. If so, the introductory language preceding the list should end in a colon and the listed items should be written to follow grammatically the introductory clause. In par. (b), what is meant by a “statement and representation of status eligibility”? Are “statement” and “representation” two different things that must be presented? In par. (c), how will the applicant be informed of what items are eligible costs? In par. (d), what is required to show the applicant’s “financial status”?
  - (5) In sub. (4), it seems cumbersome to require that the application be returned for further information. Could the person reviewing the application instead notify the applicant in writing or by telephone that information is missing or obtain the additional clarification that is needed? Also, what is meant by “reconcile any differences”? Differences between what?
  - (6) In sub. (5), the phrase “in a timely manner” should be moved to follow “information.” The same comment applies to sub. (7).
  - (7) Subsections (4) and (6) both pertain to when an application is considered complete. One should be eliminated.
  - (8) In sub. (7), what is meant by the requirement that records, documents, and other evidence must be maintained “in accordance with “generally accepted accounting principles” and “practices consistently applied”? Presumably, these are not complex corporate records. How are these formal accounting requirements possibly applicable to military families applying for emergency financial aid?
- f. The following problems are noted in s. DMA 1.06, relating to eligible and ineligible costs:
- (1) In general, this section contains numerous grammatical errors, such as incomplete phrases or sentences, which should be corrected.
  - (2) In sub. (1) (a), the meaning of “loss of funds, normally attributable to theft or not safeguarding funds” is unclear. What is “normally attributable to theft”? What is “not safeguarding funds”? Are these meant to be items for which aid may be paid?
  - (3) In sub. (1) (b), the language is grammatically incorrect and unclear. “Medical, dental, and hospital expenses” must end with a colon if it is introductory to the numbered items and must be expanded to include appropriate language indicating whether all of the following expenses are meant to be eligible expenses. Are the numbered items the only medical, dental, and hospital expenses that are eligible for payment? This entire

provision should be reviewed and clarified. Also, should it be required that a person not have medical, dental, and hospital coverage through other means, as in sub. (2) (L), with respect to funeral expenses?

(4) In par (c), whose funerals are covered?

(5) In par. (d), the first “required travel” is redundant.

g. The following comments pertain to s. DMA 1.07 relating to payments:

(1) Reference is made in sub. (1) to a “grant” to be paid to an eligible applicant while the rule generally refers to “aid.” Consistent terminology should be used to avoid confusion. Again, it is noted that this provision gives the fund administrator responsibility for determining the amount of aid to be paid, while the department is given that responsibility in s. DMA 1.04 (1) (intro.).

(2) The items in sub. (2) do not appear to be “payment procedures” but rather limitations on payments due to a lack of program funding. Also, if one subsection has a title, the other one must also have one. [s. 1.05 (1), Manual.]

h. The following comments pertain to s. DMA 1.08, relating to the governance board:

(1) In general, eliminate capitalization except at the beginning of an entry, and replace commas with periods.

(2) In s. DMA 1.08. (1) (b), who is the “Executive Director”? Is it supposed to read “Executive Assistant”?

(3) In sub. (1) (c), what is meant by “WING J-1”? Military jargon should be avoided.

(4) In sub. (1) (e), “department” should replace “DMA.”

(5) In sub. (2), how can the governance board meet as infrequently as once every six months if it is distributing financial assistance to military families?

i. In s. DMA 1.10, the second “the” on the last line should read “each.” Also, the notation “s.” should be inserted before the reference to s. 25.38, Stats.

j. Section DMA 1.11 seems unnecessary as a separate section. The language could be included in s. DMA 1.04 (3) (c) where previous payments are referenced.

k. The following comments pertain to s. DMA 1.12, relating to the appeal process (which is misnumbered as s. DMA 1.11):

(1) In sub. (1), the sentence should begin with “An.” “Funds” should be changed to “aid” for consistency.

(2) In sub. (2), how will the applicant know the “rationale and basis” for overturning the original determination? Should s. DMA 1.05 (8), which requires sending a letter of denial, specify that the letter must state reasons for

the denial, which would give the applicant an indication of the arguments to make on appeal?

- (3) Subsection (2) provides that the first level of appeal is to the fund administrator. The Adjutant General is the second level of appeal. However, according to s. WEM 1.02 (4), the fund administrator *is* the board appointed by the Adjutant General to oversee the program and, under s. DMA 1.08 (1) (a), the Adjutant General sits on the board. Therefore it appears that the two levels of appeal are one and the same.